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1972

# OBSCENITY LEGISLATION

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**OBSCENITY LEGISLATION.** Initiative. Amends, deletes, and adds Penal Code statutes relating to obscenity. Defines nudity, obscenities, sadomasochistic abuse, sexual conduct, sexual excitement and other related terms. Deletes "redeeming social importance" test. Limits "contemporary standards" test to local area. Creates misdemeanors for selling, showing, producing or distributing specified prohibited materials to adults or minors. Permits local governmental agencies to separately regulate these matters. Provides for county jail term and up to \$10,000 fine for violations. Makes sixth conviction of specified misdemeanors a felony. Creates defenses and presumptions. Permits injunctions and seizures of materials. Requires speedy hearing and trial. Financial impact: None.

YES

NO

(For Full Text of Measure, See Page 20, Part II)

#### General Analysis by the Legislative Counsel

A "Yes" vote on this initiative statute relating to the regulation of obscenity is a vote to permit local regulation of obscenity; to revise the definition of the terms "obscene matter," "obscene live conduct," and "harmful matter"; provide additional criminal prohibitions and injunctive relief; and make provision for seizure and destruction.

A "No" vote is a vote to retain the present law relating to obscene and harmful matter and obscene live conduct.

For further details, see below.

#### Detailed Analysis by the Legislative Counsel

Obscenity is now regulated by state law regulation by cities and counties is permitted only where specifically authorized by state law. This measure would permit regulation of such matters by counties, cities, and political subdivisions.

State statutes now include, in the definition of the terms "obscene matter," "obscene live conduct," and "harmful matter," the requirement that the matter or conduct be viewed on a statewide basis to see whether, as a whole under contemporary standards, it predominantly appeals to a prurient interest. This measure would provide for a local test to determine whether it predominantly appeals to the prurient interest, that is, standards generally prevailing within the incorporated area in which the offense occurred, or, in case of an unincorporated area, within a 10-mile radius of the area where the offense occurred.

The terms "obscene matter," "obscene live conduct," and "harmful matter" are now defined, in a manner consistent with decisions of the United States and California Supreme Courts, to expressly require that matter or conduct be "as a whole, utterly without redeeming social importance" to be considered within the definitions. The effect of this change is uncertain in that it would remove this requirement from the statutory definitions.

The law now generally prohibits various conduct by persons relative to obscene matter and obscene live conduct. The law now also generally prohibits various conduct

(Continued in column 2)

#### Cost Analysis by the Legislative Analyst

This initiative is concerned with the definition of obscenity and contemporary standards for its identification.

Adoption of this initiative would not have a direct fiscal impact on state and local government. Indirect fiscal effects relating to local governmental enforcement of the provisions of this initiative would depend on the subsequent level of illegal activity and local enforcement actions taken in response thereto.

(Continued from column 1)

relative to harmful matter where minors are the recipients.

This measure would make criminally punishable, as misdemeanors, various described acts relating to sex, including the distribution for public display of specified material relating to nudity, sadomasochistic abuse, sexual excitement, defecation and urination. It would also make criminally punishable, as misdemeanors, similar or related acts with respect to minors. If a person violated one of such provisions, and previously has been convicted five or more times of designated offenses relating to obscenity, he would be guilty of a felony and punishable by imprisonment in the state prison for not more than five years.

The measure would add the following new regulatory provisions:

1. The distributing, offering for sale, lending, or exhibiting of certain obscene matter within one mile of a building used as an elementary or high school, or of a public park would be made a public nuisance

2. Any person authorized to arrest another person for a violation of various provisions added to the Penal Code by the measure would be authorized to seize any prohibited materials found in the possession or under the control of the person so arrested, and to deliver them to the court. A procedure would be provided to determine whether there is probable cause to believe material so seized is prohibited material, and for its return, generally, if it is determined that it was seized unlawfully.

3. Certain prohibited materials would be declared to be contraband, and their de-

(Continued on page 46, column 1)

## Detailed Analysis by the Legislative Counsel

(Continued from page 45, column 2)

struction required.

A provision would be added to authorize injunctive relief against the various acts prohibited by the measure and existing law.

Some provisions of the measure may present constitutional questions in light of exist-

(Continued in column 2)

(Continued from column 1)

ing court decisions. However, it includes a provision which, together with provisions of existing law, provide that if any portion of the measure, or its application to any person or circumstance, is declared unconstitutional, such invalidity will not affect the other provisions or applications of the measure which are not held invalid.

### Argument in Favor of Proposition 18

The U.S. Supreme Court has recognized the right and duty of states to provide for their children an environment conducive to their healthy emotional and moral development. That is the purpose of this measure. Its restraints are reasonable. They will be welcomed by those sincerely concerned about the welfare of our society and its children.

Recent experience clearly has demonstrated that California's obscenity laws are inadequate. Hardcore pornography has saturated many communities and threatens to engulf the state. It blatantly is flaunted in public places without regard for the sensibilities of our children. Law enforcement is handcuffed by statutes which give complete license to smut-peddlers.

Eminent students of human behaviour have expressed grave concern about the damaging effects of pornography, especially upon the young. They have identified these interrelated destructive influences of smut upon individuals and society:

1. Early exposure to pornography cripples emotional development and diminishes the consumer's ability to mature sexually.
2. Pornography is addictive and is as destructive of personality as narcotics.
3. Pornography dehumanizes sex. Humans become objects to be used rather than persons to be loved. Animals also become things to be used for the consumer's degenerate sexual gratification.
4. Pornography glorifies sexual violence.
5. Pornography encourages promiscuity among the young, with its consequent spread of venereal disease and unwanted pregnancies.
6. Pornography depersonalizes sex. Robbed of its meaningful, interpersonal relationship, sex becomes a warped and degenerate activity.
7. Dehumanization and depersonalization of sex produce defective personalities which ultimately produce a defective society.
8. History attests that societies which tolerate widespread public indulgence in deviant sexual practices suffer marked cultural and political decline.

The inability of law enforcement effectively to cope with the problems of pornography is the result of these weaknesses in our statutes:

1. The requirement that, to be considered obscene, material must be without any redeeming social importance. The requirement is unnecessary and undesir-

able. It has allowed even the hardest pornography to escape censorship.

2. Vagueness of present language works a hardship on merchants and prosecution alike.
3. Because there is no means for stopping obscene materials prior to their dissemination, much damage is done before the law can act.

4. No mechanism exists for allowing local community control of pornography.

### THE PURPOSE OF THIS MEASURE IS:

1. To protect our children from the debilitating effects of obscenity by eliminating hardcore pornography.
2. To give some control over pornographic materials to local communities.
3. To conform California law to pronouncements of the United States Supreme Court.
4. To help law enforcement conserve funds through more efficient use of its resources.

### WHEN ENACTED BY THE PEO.

#### THIS MEASURE WILL:

1. Eliminate the "social importance test" from our statutes.
2. Within reasonable limits, allow local communities to regulate the moral climate in which they wish to live.
3. Place interested parties on notice as to specific activities which are proscribed.
4. Within reasonable and constitutional limits, allow law enforcement to stop dissemination of harmful matter before the damage is done.

JOHN L. HARMER

State Senator, 21st District

WOODRUFF J. DEEM

District Attorney, Ventura County

HOMER E. YOUNG

Pornography Specialist

Federal Bureau of Investigation,

Retired (1955-1972)

### Rebuttal to Argument in Favor of Proposition 18

Vote "NO" to the censorship initiative. The supporting argument fails to tell you these important facts.

The censorship initiative is not primarily concerned with minors. Over 80% of its provisions directly limit the rights of adults to read or view matter. But it could limit adults to matter which is fit only for children.

The censorship initiative will not ban pornography. Our highest court has explicitly said that our existing obscenity law bans "hard core pornography."

The censorship initiative will ban matter which is not obscene. It creates hundreds of crimes, crimes so broad that recent academy award movies Patton, Cabaret and Godfather would be subject to prosecution.

The censorship initiative does not give control over pornographic materials to local communities. Local police, sheriffs and district attorneys are already empowered to enforce our law banning pornography. But it does give cities and counties the right to "further regulate" the right to read and to create more censorship laws.

The censorship initiative is not necessary to protect minors. California passed a special statute in 1969 to prohibit distribution of harmful matter to children.

The censorship initiative will not bring California into conformity with our Constitution. Rather, the initiative, by repealing such constitutionally required provisions as the social importance test, will subject our existing law to invalidation. The social importance test does not impede the prosecution of obscenity. Our highest court has said that hard core pornography is utterly without redeeming social importance.

Vote "NO" to the obscenity initiative.

FATHER CHARLES DOLLEN  
Library Director  
University of San Diego  
RT. REV. RICHARD MILLARD  
Suffragan Bishop to California  
Episcopal Bishop of San Jose  
CHARLES WARREN  
Assemblyman, 56th District

#### Argument Against Proposition 18

Vote "NO" on Proposition 18. It would not regulate obscenity. It would create wholly new crimes banning matter which is not obscene. It would create the most drastic censorship law ever proposed to the citizens of California. It would impose censorship on books, newspapers, motion pictures, sculpture, paintings, records and all forms of distribution including libraries.

Proposition 18 would abolish the protection now given recognized works of art and literature. It would deny adults the right to read or view matter which is not obscene. It would deny adults in many cities the right to read or view matter freely available elsewhere. It would create sweeping new crimes subjecting motion picture artists and others to criminal prosecution. It would give power to government officials to seize books, newspapers or motion pictures without a search warrant. It would restrict the matter which newspapers could freely circulate. It would empower cities and counties to create hundreds of even broader censorship laws.

Proposition 18 goes far beyond banning obscene matter. California already bans obscenity to the extent constitutionally permissible. It would create wholly new crimes banning matter which is not obscene. The new crimes are so sweeping and vaguely worded that

adults could be prevented from seeing the academy award winning motion pictures French Connection, Patton and Midnight Cowboy, or award nominees Love Story, MASH, Cabaret, Butch Cassidy and the Sundance Kid, Five Easy Pieces and The Last Picture Show. The producers and stars of such movies could be subject to criminal prosecution.

Proposition 18 is a badly drafted measure of over 6,000 words. It is so broad that it would make it a crime to exhibit to an adult a motion picture or magazine containing a single photograph "that shows the nude or nearly nude body," or that utilizes slang words referring to the human body. Playboy magazine would obviously be banned as would many major motion pictures.

Proposition 18 repeals the protection now given recognized works of art and literature, such as Michelangelo's statue of David, by repealing language protecting matter of redeeming social importance. This drastic proposal was rejected by the people of this state in 1966 when they soundly defeated an identical initiative proposal.

Proposition 18 could also spawn hundreds of new censorship laws. It empowers cities and counties to pass censorship laws going beyond those in the initiative and to ban what is not tolerated by their local standards. Matter could not circulate freely in the state. Adults in one city would be denied matter lawfully available in another city. Only the most bland and innocuous of matter would survive this oppressive network of censorship laws.

The drastic proposals contained in Proposition 18 are opposed by newspapermen, motion picture artists, librarians and many others.

Proposition 18 would create a vast bureaucratic jungle of censorship laws strangling our freedoms of speech and press. Our police are needed in the streets preventing crime, not in our libraries censoring books.

Vote "NO" on censorship.

FATHER CHARLES DOLLEN  
Library Director, University of San Diego  
RT. REV. RICHARD MILLARD  
Suffragan Bishop to California  
Episcopal Bishop of San Jose  
CHARLES WARREN  
Assemblyman, 56th District

#### Rebuttal to Argument Against Proposition 18

Opponents' review of Proposition 18 must have been superficial. Their argument contains many gross misstatements of fact, any of which would be obvious to a careful reader.

The charge of "vagueness" is false. The measure is long because it is clear and specific. "Broad and vaguely worded" documents require few words.

The emotional appeal to the specter of censorship clearly is misplaced. Because the measure is extremely specific, it would in fact reduce the incidence of arbitrary censorship.

The concepts advocated here are not new. They have been adopted by other states, including New York and Oregon.

Some facts:

1. California law is unduly permissive. Many states never have adopted the "redeeming social importance test." Others have abolished it. No majority opinion of the United States Supreme Court requires it.
2. None of the movies listed by opponents would be banned, nor would "Playboy" or Michelangelo's "David". What is banned is the obscene exhibition of human genitals, sexual conduct and excretion.
3. Broad defenses within the measure protect works of art and other matter which is not obscene. Opponents conveniently overlooked these. As it concerns adults,

the measure is directed at hardcore pornography, nothing more.

Opponents' argument should be rejected just as the conclusions of the President. Commission on Pornography were rejected by conscientious scholars, Congress and the President himself, because of its utter disregard for the facts.

We urge a YES vote. We must protect ourselves against the commercialization of degenerate sex. This proposition may be our last chance.

JOHN L. HARMER  
State Senator, 21st District  
WOODRUFF J. DEEM  
District Attorney,  
Ventura County  
HOMER E. YOUNG  
Pornography Specialist  
Federal Bureau of Investigation,  
Retired (1955-1972)

#### **MARIJUANA. Initiative.** Removes state penalties for personal use.

Proposes a statute which would provide that no person eighteen years or older shall be punished criminally or denied any right or privilege because of his planting, cultivating, harvesting, drying, processing, otherwise preparing, transporting, possessing or using marijuana. Does not repeal existing, or limit future, legislation prohibiting persons under the influence of marijuana from engaging in conduct that endangers others. Financial impact: None.

19

YES

NO

(For Full Text of Measure, See Page 27, Part II)

#### **General Analysis by the Legislative Counsel**

A "Yes" vote on this initiative statute is a vote to revise present California law relative to marijuana to provide that no person in the State of California 18 years of age or older shall be punished in any way for growing, processing, transporting, or possessing marijuana for personal use, or for using it.

A "No" vote is a vote to reject this revision.

For further details, see below.

#### **Detailed Analysis by the Legislative Counsel**

State law now makes possession of marijuana punishable as either a misdemeanor or a felony for a first offense and as a felony for a second or subsequent offense. The planting, cultivating, harvesting, drying, or processing of marijuana or any part thereof is punishable as a felony; and the transporting, offering to transport, or attempting to transport marijuana is punishable as a felony.

This measure would provide that no person in this state who is 18 years of age or older shall be punished criminally, or be denied any right or privilege, by reason of such person's planting, cultivating, harvesting, drying, processing, otherwise preparing, transporting, or possessing marijuana for personal use, or by reason of that use.

The measure would provide that it would not be construed as repealing existing legis-

(Continued in column 2)

#### **Cost Analysis by the Legislative Analyst**

This measure repeals for persons 18 years of age or older all criminal sanctions for the planting, cultivating, harvesting, drying, processing, otherwise preparing, transporting or possessing marijuana for the purpose of personal use or by reason of that use.

This measure would not result in increased state or local costs. It should result in a reduction in cost of state and local law enforcement and judicial activities relating to the personal possession and use of marijuana. However, such cost reductions will probably not be large enough to be readily identifiable and result in a decrease in state and local expenditures. Rather, they will be shifted to other law enforcement and judicial activities.

(Continued from column 1)

lation, or limiting the enactment of future legislation, that prohibits persons under the influence of marijuana from engaging in conduct that endangers others. An example of such legislation is present Section 23105 of the Vehicle Code, which prohibits the operation of a vehicle on a highway while under the influence of any drug.

Any change in California law made by the measure would not affect criminal penalties prescribed by the federal "Control Substances Act" with respect to the planting, cultivating, harvesting, drying, processing, or otherwise preparing, transporting, or possessing marijuana for personal use.

each class of position of policemen or deputy sheriffs employed by such city or county.

(b) Effective July 1, 1973 and effective July 1 of each year thereafter, the board shall adjust and determine the maximum rate of salary for each class of position of uniformed members of the California Highway Patrol to be at least equal to the highest maximum rate of salary then established for any policemen or deputy sheriffs employed within the State in a comparable class of position.

(c) The Board shall make an annual written report to the Governor of its findings and the adjustments and determinations of rates of salary made pursuant to this section.

(d) Commencing with the budget for fiscal year 1973-74, any budgetary provisions required to fully implement the periodic salary adjustments and determinations re-

quired by this section shall be included in each annual budget submitted by the Governor to the Legislature and shall be modified or stricken therefrom except by two-thirds (2/3) vote of each of the Senate and of the Assembly voting solely on the issue of such provisions and on no other matter.

(e) As used herein, the term "comparable class of position" shall mean a group of positions substantially similar with respect to qualifications or duties or responsibilities.

(f) The provisions of this section shall prevail over any otherwise conflicting provisions of this article which may relate generally to salaries of civil service employees or to salaries of State Employees who are not elected by popular vote.

**17 DEATH PENALTY.** Initiative Constitutional Amendment. Amends California Constitution to provide that all state statutes in effect February 17, 1972 requiring, authorizing, imposing, or relating to death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative or referendum; and that death penalty provided for under those state statutes shall not be deemed to be, or constitute, infliction of cruel or unusual punishments within meaning of California Constitution, article I, section 6, nor shall such punishment for such offenses be deemed to contravene any other provision of California Constitution. Financial impact: None.

YES

NO

(This Initiative Constitutional Amendment proposes to add a new section to the Constitution. Therefore, the provisions thereof are printed in **BOLDFACE TYPE** to indicate that they are **NEW**.)

**PROPOSED AMENDMENT TO  
ARTICLE I**

**Sec. 27. All statutes of this state in effect on February 17, 1972, requiring, author-**

**izing, imposing, or relating to the death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative, or referendum.**

The death penalty provided for under those statutes shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments within the meaning of Article 1, Section 6 nor shall such punishment for such offenses be deemed to contravene any other provision of this constitution.

**18 OBSCENITY LEGISLATION.** Initiative. Amends, deletes, and adds Penal Code statutes relating to obscenity. Defines nudity, obscenities, sadomasochistic abuse, sexual conduct, sexual excitement and other related terms. Deletes "redeeming social importance" test. Limits "contemporary standards" test to local area. Creates misdemeanors for selling, showing, producing or distributing specified prohibited materials to adults or minors. Permits local governmental agencies to separately regulate these matters. Provides for county jail term and up to \$10,000 fine for violations. Makes sixth conviction of specified misdemeanors a felony. Creates defenses and presumptions. Permits injunctions and seizures of materials. Requires speedy hearing and trial. Financial impact: None.

YES

NO

(This Initiative Measure proposes to amend and add sections and chapters of the Penal Code. Therefore, **EXISTING PROVISIONS** proposed to be **DELETED** are printed in **STRIKEOUT TYPE** and **NEW PROVISIONS** proposed to be **INSERTED** or **ADDED** are printed in **BOLDFACE TYPE**.)

**PROPOSED LAW**

**SECTION 1.** Section 311 of the Penal Code is amended to read:

311. As used in this chapter:

(a) "Obscene matter" means matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which

taken as a whole is utterly without redeeming social importance.

The predominant appeal to prurient interest of the matter is judged with reference to average adults unless it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition, that it is designed for clearly defined deviant sexual groups, in which case the predominant appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, dissemination, distribution, or publication indicate that matter is being commercially exploited by the defendant for the probative prurient appeal, such evidence is matter and respect to the nature of the the matter is justify the conclusion that social importance. without redeeming so-

(b) "Matter" means

newspaper or other print book, magazine, or any picture, drawing or written material, motion picture, or other pictorial representation or any statue or other figural representation, transcription or mechanical or electrical reproduction or chemical articles, equipment, machines or material.

(c) "Person" means any individual, partnership, firm, association, corporation or legal entity.

"Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter or live conduct.

(f) "Exhibit" means to show.

(g) "Obscene live conduct" means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, where, taken as a whole, the predominant appeal of such conduct to the average person, applying contemporary standards is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is conduct which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is conduct which taken as a whole is utterly without redeeming social importance.

(1) The predominant appeal to prurient interest of the conduct is judged with reference to average adults unless it appears from the nature of the conduct or the circumstances of its production, presentation or exhibition, that it is designed for clearly defined deviant sexual groups, in which case the predominant appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, advertising, or exhibition indicate that

live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, such evidence is probative with respect to the nature of the conduct and can justify the conclusion that the conduct is utterly without redeeming social importance.

(h) "Contemporary standards" means the standards generally prevailing in the incorporated area in which the activity complained of occurred. If the area in which such activity occurred is unincorporated, "contemporary standards" means the standards generally prevailing within a 10-mile radius of the area in which such activity occurred.

SECTION 2. Section 313 of the Penal Code is amended to read:

313. As used in this chapter:

(a) "Harmful matter" means matter, taken as a whole, the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in the description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance for to minors.

(1) When it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups, the predominant appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, where circumstances of production, presentation, dissemination, distribution, or commercial exploitation indicate that matter is being commercially exploited by the defendant for the probative prurient appeal, such evidence is matter and can justify the conclusion that the matter is utterly without redeeming social importance for minors.

(b) "Matter" means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figural representation, transcription, or figure, or any chemical, or electrical reproduction, mechanical, other articles, equipment, machines, or materials.

(c) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(d) "Distribute" means to transfer possession of, whether with or without consideration.

(e) "Knowingly" means being aware of the character of the matter.

(f) "Exhibit" means to show.

(g) "Minor" means any natural person under 18 years of age.

(h) "Contemporary standards" means the standards generally prevailing in the incor-

porated area in which the activity complained of occurred. If the area in which such activity occurred is unincorporated, "contemporary standards" means the standards generally prevailing within a 10-mile radius of the area in which such activity occurred.

SECTION 3. Section 311.3 is added to the Penal Code, to read:

(a) It is a public nuisance for any person to distribute, offer to sell, loan or exhibit any matter containing any picture, photograph, drawing or other visual representation which explicitly reveals post-pubertal male or female genitals, or which portrays or depicts sadomasochistic abuse, sexual excitement or sexual conduct, within one mile measured in a straight line of any building used as a private or public elementary or high school, or of any public park.

(b) Defenses set forth in Section 313.12 of Chapter 7.7 and Section 313.27(b) of Chapter 7.8 of this title shall apply also to this section. The burden of proof in such defenses, by a preponderance of the evidence, shall be upon the defendant.

(c) Definitions for the terms "sadomasochistic abuse," "sexual conduct" and "sexual excitement" which are set forth in Section 313.6 of Chapter 7.7 of this title shall apply to this section.

Section 4. Chapter 7.7 (commencing with Section 313.6) is added to Title 9 of Part 1 of the Penal Code, to read:

#### Chapter 7.7

#### 313.6 AS USED IN CHAPTER 7.7 AND 7.8 OF THIS TITLE:

(a) "Advertising purposes" means purposes of propagandizing in product or type the sale commercially of or the offering of product or product, or the exhibiting commercially of a service, entertainment, or activity.

(b) "Displays" means exhibiting, or in any fashion displaying in any location, whether public or private an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it. It also includes the giving depot, or vehicle in a public thoroughfare, out of vehicle.

Every "Exhibition" shall include, but not be limited to, motion picture and television productions.

(d) "Live public show" means a public show in which human actors, dancers, or other performers, employees, or other persons appear in person before spectators or customers.

A bona fide drawing, painting, photography, sculpture, or fine print-making class which utilizes human models and which admits only participating instructors, students, and models, and which does not in any way use, display or exhibit sadomasochistic abuse, sexual conduct, sexual excitement, de-

fecation or urination shall not be deemed a live public show.

(e) "Knowingly" means having knowledge of the character of any item or activity described in chapter 7.7 or 7.8 of this title, or having failed to exercise reasonable care to ascertain its character.

(f) "Minor" means any person under the age of eighteen years.

(g) "Nudity" means uncovered post-pubertal human male or female genitals, pubic areas, or buttocks, or the human female breast below a point immediately above the top of the nipple (or the breast with the nipple and immediately adjacent area only covered), or the covered male penis in a discernibly turgid slang.

(h) "Obscenities" means words or phrases currently generally not used for vulgar use in mixed society or female breasts, refer to genitals, butto products, or sexual or excretory functions have no other meaning, conduct either that are clearly utilized for or that in context, or excretory meaning. Their bodily generally rejected" are to "Words used with reference to prevailing be determine the local community in which practice complained of was used. the "Person" means any person, association, corporation, or business entity, or any employee thereof.

(j) "Public show" means any entertainment or exhibition advertised or in fashion held out to be accessible to the public, whether or not an admission or other charge is levied or collected.

An entertainment or exhibition shall be deemed a public show although access to it is only granted to members of a club or other association, when membership in such organization is obtained upon payment of an admission price or contribution or token dues or other small fee, and the organization in fact exists primarily for sponsoring or arranging admissions to such performances.

(k) "Public thoroughfare, depot, or vehicle" means any street, highway, park, arcade, depot, or transportation platform, or other place, whether indoors or out, or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any agency of public transportation, that is designed for the use, enjoyment, or transportation of the citizenry.

(l) "Sadomasochistic abuse" means flagellation or torture by or upon a human who is nude, or clad in undergarments, or in revealing or bizarre costume, or the condition of one who is nude or so clothed and is being fettered, bound, tied or in similar fashion restrained.

(m) "Sells or offers to sell" means sells or offering for monetary consideration or other valuable commodity or services.

(n) "Sexual conduct" means human masturbation, sexual intercourse, or any touch-



ing of the genitals, pubic areas, or buttocks of the human male or female, or the breasts of a female, whether alone or between persons of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification. "Sexual conduct" shall include the touching of the genitals of an animal in an act of apparent sexual stimulation or gratification.

(o) "Sexual excitement" means the condition of human male or female genitals, or the breasts of the female, when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity or sadomasochistic abuse.

313.7. Any person shall be guilty of a misdemeanor who, in any capacity, knowingly directs, gives, manages, participates in, prepares, or presents, or who employs others so to do, any live public show explicitly showing sadomasochistic abuse, sexual conduct, or nudity, or containing explicit verbal descriptions or narrative accounts of sadomasochistic abuse, sexual conduct, or sexual excitement or utilizing obscenities.

313.8. Any person shall be guilty of a misdemeanor who, in any capacity, knowingly:

(a) Directs, distributes, exhibits, manages, photographs, produces, sells, or shows, or possesses with intent to sell or to show, or participates in the creation, presentation, production, or transfer, of any motion picture, television production, or of any photograph, or any book, magazine, or other item, containing one or more photographs, of humans:

(1) That, showing sadomasochistic abuse, sexual conduct, or defecation or urination, explicitly reveals genital areas; or

(2) That, intended to be presented at a public show, explicitly reveals acts of sadomasochistic abuse, sexual conduct, defecation, or urination, or persons so positioned as to appear to be engaged in such conduct, and that shows the nude or nearly nude body, although genital areas are not pictured; or

(3) That utilizes obscenities

(b) With intent to present it at a public show, directs, distributes, exhibits, manages, photographs, produces, sells, shows, or possesses, or participates in the creation, presentation, sale, or transfer, of any motion picture or television production of humans:

(1) That explicitly reveals genital areas; or

(2) That either reveals sexual acts of homosexual or bestial contact, or that shows the participants in or witnesses to such suggested acts moments prior to, or during, or moments after such suggested acts.

(c) Draws, exhibits, paints, presents, sells, shows, or participates in the creation or presentation of any drawing, picture, sculpture, or other essentially nonphotographic visual representation or other image, or any book, magazine, or other item

containing one or more such images that, presented at a public show, shows sadomasochistic abuse, sexual conduct, sexual excitement, defecation, or urination, so as to reveal genital areas.

313.9. Any person shall be guilty of a misdemeanor who, in any capacity, knowingly distributes, leases, sells, or otherwise commercially markets or rents any book, magazine, pamphlet, paperback, or other written or printed matter however reproduced, or any sound recording, or who possesses such item for purposes of so disposing of it, under circumstances demonstrating his intention to exploit commercially a morbid interest in sadomasochistic abuse, sexual conduct, sexual excitement, defecation, or urination. Among those circumstances that may, taken together, serve to demonstrate the actor's intention are:

(a) The content of the item with regard to materials it contains in the enumerated proscribed areas.

(b) The content of the item, if any, apart from those materials it contains in the enumerated proscribed areas, and the relative significance of that content in the advertising or marketing of the item.

(c) The artistic, scientific, historical, or other social values of the item, and the relative significance of such values in the advertising or marketing of the item.

(d) The general character of the advertising or marketing of the item, and that of other items jointly advertised or marketed with the item.

(e) The format, price, and distribution of the item.

313.10. Every person is guilty of a misdemeanor who

(a) Sings or speaks any song, ballad, or other combination of words which describes or depicts sadomasochistic abuse, sexual conduct, sexual excitement, defecation or urination, or which uses obscenities, in any public show, live public show, motion picture, television production, or other exhibition or medium reproducing human conduct, or in any public place.

(b) Procures, counsels, or assists any person to engage in such conduct, or who knowingly exhibits or procures, counsels, or assists in the exhibition of a motion picture, television production, or other mechanical reproduction containing such conduct.

313.11. (a) There is a rebuttable presumption applicable to the foregoing provisions of this chapter that any person owning, operating, or employed in the business of selling, offering for sale, renting, or exhibiting any of the materials proscribed by this chapter has knowledge of the contents of all such materials offered for sale, delivered from, exhibited, shown, rented, or displayed in the premises owned or operated by him or in which he is employed.

(b) The provisions of this section shall not apply where the defendant makes a showing that, at the time of his arrest:

(1) He was a salaried employee of the business, and

(2) He had no interest in the business beyond his salary or wage, and

(3) He was under the direct personal supervision of an owner, manager or operator of the business, who is a resident of this state and who is not exempt from prosecution under the provisions of this chapter.

313.12. The following shall be defenses to the charges enumerated in the foregoing sections of this chapter, the burden of proof of which, by a preponderance of the evidence, shall be upon the defendant:

(a) That those aspects of any item that would otherwise appear to be actionable under this chapter form merely a minor and incidental part of an otherwise non-offending whole, and that sexual titillation is not one of their primary purposes, except that no sexual conduct beyond an apparent touching of the unexposed buttocks or female breast be permitted in any live public show, nor shall any sexual conduct that explicitly reveals genital areas be permitted in any public show, nor shall any book, magazine, or other item contain any photograph of humans that, showing sadomasochistic abuse, sexual conduct, defecation or urination, explicitly reveals genital areas.

(b) That sexual titillation is not a primary purpose of those aspects of any item that would otherwise appear to be actionable under this chapter, and that such aspects are essential to the accomplishment of such primary purpose or purposes, and that a bona fide governmental, scientific, or other similar justification for defendant's conduct relating to such aspects of such items exists, demonstrated by the content, format, and price of the work itself, the circumstances of the item's marketing and intended use, and the defendant's conduct concerning it.

313.13. If any provision of this chapter or the application of this chapter to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Section 5. Chapter 7.8 (commencing with Section 313.20) is added to Title 9 of Part 1.

#### Chapter 7.8.

313.20. Definitions appearing in Section 313.6 of Chapter 7.7 of Title 9 of Part 1 of this Code shall apply to this chapter.

313.21. Any person shall be guilty of a misdemeanor who knowingly sells or offers to sell to a minor any of the following:

(a) Any picture, photograph, drawing, sculpture, motion picture, film, or other visual representation or image of a person or portion of the human body that depicts nudity, sadomasochistic abuse, sexual conduct, or sexual excitement; or

(b) Any book, magazine, paperback, pamphlet, or other written or printed matter however reproduced, or any sound recording, which contains any matter enumerated in the immediately preceding paragraph, or obscenities, or explicit verbal descriptions or narrative accounts of sexual conduct, sexual excitement, or sadomasochistic abuse.

313.22. Any person shall be guilty of a misdemeanor who, for a monetary consideration or other valuable commodity or service, within this state, arranges for or dispatches for delivery directly to any minor, whether the delivery is to be made within or outside of this state, any of the materials enumerated in Section 313.21. However, unless the defendant either was informed or had reason to suspect that the customer or prospective customer was a minor, he shall not be guilty of a misdemeanor when he has caused to be printed on the outer package, wrapper, or cover of the merchandise to be delivered, in words or substance, "This package (wrapper) (publication) contains material that, by California law, may not be sold directly to a minor." This section does not render the carrier's conduct, or that of its agents or employees, criminal.

313.23. Any person shall be guilty of a misdemeanor who, for a monetary consideration or other valuable commodity or service, knowingly exhibits to a minor, or knowingly sells or offers to sell to a minor an admission ticket or other means to gain entrance to a place whereon there is exhibited a motion picture, show, or other presentation, whether pictured, animated, or live, which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, or the participants in or onlookers at acts in progress of sadomasochistic abuse or sexual conduct, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct.

313.24. Any person shall be guilty of a misdemeanor who, while either operating or being employed in a sales, cashier, or managerial capacity in any retail establishment, knowingly suffers or permits a minor to enter or remain on such premises, if therein in that portion where the minor is present:

(a) Any picture, photograph, drawing, sculpture, or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sadomasochistic abuse, defecation or urination is visibly displayed.

(b) Any book, magazine, pamphlet, paperback, or other written or printed matter however reproduced is so displayed that it visibly reveals a person or portion of the human body depicting nudity, sexual conduct, sadomasochistic abuse, defecation or urination.

313.25. The following rebuttable presumptions shall apply to the foregoing provisions of this chapter:

(a) Any person owning, operating, or employed in the business of selling, offering for sale, renting, or exhibiting any of the materials proscribed by this chapter shall be presumed to have knowledge of the contents of all such materials offered for sale, delivered from, exhibited, shown, rented, or displayed in the premises owned or operated by him or in which he is employed.

(b) The sale, offer to sell, exhibition, show, or display to a minor of any of the items proscribed by this chapter, shall be presumptive evidence that the defendant knew that the person was a minor.

The provisions of paragraph (a) of this section shall not apply where the defendant makes a showing that, at the time of his arrest:

(1) He was a salaried employee of the business, and

(2) He had no interest in the business beyond his salary or wage, and

(3) He was under the direct personal supervision of an owner, manager or operator of the business, who is a resident of this state and who is not exempt from prosecution under the provisions of this chapter.

313.26. The following shall be defenses to the charges enumerated in the foregoing sections of this chapter, the burden of proof of which, by a preponderance of the evidence, shall be upon the defendant:

That from the minor's appearance the defendant had no reason to suspect that the minor was under 18 years of age, or that if he had reason to or did so suspect, he made reasonable efforts to determine the minor's age. Reasonable effort shall not consist of merely asking the minor his age.

(b) That sexual titillation is not a primary purpose of those aspects of any item that otherwise would appear to be actionable under this chapter and that defendant was a bona fide school, museum, art gallery or public library, or was acting in his capacity as an employee of such organization or of a retail outlet affiliated with and serving the educational purposes of such organization.

(c) That sexual titillation is not a primary purpose of those aspects of any item that otherwise would appear to be actionable under this chapter and that such aspects form merely a minor and incidental part of an otherwise non-offending whole, except that under no circumstances shall sadomasochistic abuse, defecation, urination or sexual conduct beyond an apparent touching of the unexposed buttocks or female breast be permitted in any live public show, nor shall any sadomasochistic abuse, sexual conduct that explicitly reveals genital areas, defecation or urination be permitted in any public show, nor shall any book, magazine or other material contain any photograph of humans that depicts sadomasochistic abuse, sexual conduct that explicitly reveals genital areas, defecation or urination.

313.27. Any person shall be guilty of a misdemeanor who knowingly shows, presents or exhibits outdoors, or who knowingly aids or assists in the showing, presentation or exhibition outdoors, of any motion picture, slide presentation or live public show which is visible from any public street or highway or from any other place where such showing, presentation or exhibition may be visible to a minor, and which depicts or reveals nudity, sexual conduct, sexual excitement, defecation, urination or sadomasochistic abuse, or the participants in or onlookers at acts in progress of sadomasochistic abuse or sexual conduct, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct, which may be audible to a minor.

The provisions of Section 313.25 shall apply to this section.

313.28. Every person who, with knowledge that a person is a minor under 18 years of age, or who, while in possession of such facts that he should reasonably know that such person is a minor under 18 years of age, hires, employs, or uses such minor to do or assist in doing any of the acts described in Chapter 7.7 or 7.8 of this title is guilty of a misdemeanor.

313.29. Every person, who, knowingly, as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, publication or other merchandise, requires that the purchaser or consignee receive any matter reasonably believed by the purchaser or consignee to be materials proscribed by Chapter 7.7 or 7.8 of this title, or who denies or threatens to deny a franchise, revokes or threatens to revoke, or imposes any penalty, financial or otherwise, by reason of the failure of any person to accept such matter, or by reason of the return of such matter, is guilty of a misdemeanor.

313.30. (a) Every person who is authorized to arrest any person for a violation of Chapter 7.7 or 7.8 of this title is equally authorized to seize any materials proscribed by such chapters found in the possession or under the control of the person so arrested and to deliver them to the court before whom the person so arrested is required to be taken.

(b) If the seizure be controverted by any interested person, the court to whom any materials proscribed by such chapters is delivered pursuant to the foregoing paragraph or to the return of a search warrant must within one day after service upon the prosecuting attorney of a motion to suppress the evidence or restore the matter, proceed to take testimony in relation thereto. A decision as to whether there is probable cause to believe the seized material to be material proscribed by Chapter 7.7 or 7.8 of this title shall be rendered by the court within two days of the conclusion of the restoration proceedings.

If the motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored, unless it is subject to confiscation as contraband, as provided for in Section 313.31 in which case it shall not be returned.

313.31. (a) Materials proscribed by Chapter 7.7 or 7.8 of this title and advertisements for matter represented to be such materials are contraband and shall be destroyed.

(b) Upon the conviction of the accused or rendition of a court order declaring such matter to be contraband and subject to confiscation, the court shall, when such judgment becomes final, order, upon five days' notice to the defendant, any materials or advertisement, in respect to which the accused stands convicted, and which remains in the possession or under the control of the district attorney or any law enforcement agency, to be destroyed, and the court shall cause to be destroyed any such material in its possession or under its control, retaining only such copies as are necessary for law enforcement purposes, provided that destruction of such matter shall be stayed until after the time provided for filing a notice of appeal has expired, and provided further that where an appeal is timely filed, such destruction shall be stayed pending the decision on appeal.

313.32. Chapters 7.5, 7.6, 7.7, 7.8 and 7.9 of this title do not occupy the field in the regulation of the materials and conduct proscribed by such chapters, and counties, cities, and other political subdivisions of this state are hereby specifically given the right to further regulate such materials and conduct.

313.33. (a) Every person who violates any provision of Chapter 7.7 or Chapter 7.8 of this title, is punishable by fine of not more than two thousand (\$2,000.) or by imprisonment in the county jail for not more than six months, or both such fine and such imprisonment.

(b) If such person previously has been convicted of any violation of Section 313.7, 313.8, 313.9 or 313.10 of Chapter 7.7, or of any violation of Section 313.21, 313.22, 313.23 or 313.28 of Chapter 7.8, or of any violation of Section 311.2, 311.4, 311.6 or 311.7 of Chapter 7.5, or of any violation of Section 313.1 of Chapter 7.6, all chapters of this title, he is punishable by a fine of not more than ten thousand dollars (\$10,000.) or by imprisonment in the county jail for not more than one year, or by both such fine and such imprisonment.

(c) If such person previously has been convicted five or more times under any of the sections enumerated in paragraph (b) of this section, he is punishable by imprisonment in the state prison for not more than five years.

313.34. If any provision of chapter 7.7 or 7.8 of this title or the application of such chapter to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chap-

ter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Section 6. Chapter 7.9 (commencing with Section 313.50) is added to Title 9 of Part 1 of the Penal Code, to read:

#### CHAPTER 7.9. INJUNCTIVE RELIEF

313.50. The superior courts of the State of California have jurisdiction to enjoin the sale or distribution of any book, magazine, or any other publication or article, or the public showing of any motion picture film, slide, exhibit, or performance which is prohibited under Chapters 7.5, 7.6, 7.7 or 7.8 of this title.

313.51. The district attorney of any county in this state in which a person, firm, or corporation sells or distributes, or is about to sell or distribute, or is about to acquire possession with intent to sell or distribute any book, magazine, pamphlet, newspaper, story paper, writing paper, picture, card, drawing, photograph, or other publication or matter which is prohibited by the above enumerated chapters may maintain an action for an injunction against such person, firm, or corporation in the superior court to prevent the sale or further sale or the distribution or further distribution of any such prohibited publications or articles.

313.52. The district attorney of any county in this state in which a person, or corporation shows publicly, or is about to show publicly, or is about to acquire possession with intent to show publicly any motion picture film, slide, exhibit, or performance which is prohibited under the above enumerated chapters may maintain an action for an injunction against such person, firm, or corporation in the superior court to prevent the public showing or further public showing of such prohibited matter or activity.

313.53. The person, firm, or corporation sought to be enjoined is entitled to a trial of the issues within one day after joinder of issue and a decision shall be rendered by the court within two days after the conclusion of the trial.

313.54. In the event that an order or judgment be entered in favor of the district attorney and against the person, firm, or corporation sought to be enjoined, such final order or judgment shall contain a provision directing the person, firm, or corporation to surrender to such peace officer as the court may direct or to the sheriff of the county in which the action was brought any of the matter described in Section 313.51 or 313.52, and such sheriff or officer shall be directed to seize and destroy the same, provided that destruction of such matter shall be stayed until after the time provided for filing a notice of appeal has expired, and provided further that where an appeal is timely filed, destruction shall be stayed pending the decision on appeal.

313.55. In any action brought pursuant to the provisions of this chapter, the district attorney is not required to file any bond before the issuance of an injunction order provided for by this chapter, is not liable for costs, and is not liable for damages sustained by reason of the injunction order in cases where judgment is rendered in favor of the person, firm, or corporation sought to be enjoined.

313.56. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

**19 MARIJUANA. Initiative.** Removes state penalties for personal use. Proposes a statute which would provide that no person eighteen years or older shall be punished criminally or denied any right or privilege because of his planting, cultivating, harvesting, drying, processing, otherwise preparing, transporting, possessing or using marijuana. Does not repeal existing, or limit future, legislation prohibiting persons under the influence of marijuana from engaging in conduct that endangers others. Financial impact: None.

YES

NO

(This Initiative Measure proposes to add a section to the Health and Safety Code. It does not amend any existing law. Therefore, its provisions are printed in **BOLD-FACE TYPE** to indicate that they are **NEW**.)

**PROPOSED SECTION 11530.2, HEALTH AND SAFETY CODE.**

**SECTION 11530.2**

(1) No person in the State of California 18 years of age or older shall be punished criminally, or be denied any right or privilege,

by reason of such person's planting, cultivating, harvesting, drying, processing, otherwise preparing, transporting, or possessing marijuana for personal use, or by reason of that use.

(2) This provision shall in no way be construed to repeal existing legislation, or limit the enactment of future legislation, prohibiting persons under the influence of marijuana from engaging in conduct that endangers others.

**20 COASTAL ZONE CONSERVATION ACT. Initiative.** Creates State Coastal Zone Conservation Commission and six regional commissions. Sets criteria for and requires submission of plan to Legislature for preservation, protection, restoration and enhancement of environment and ecology of coastal zone, as defined. Establishes permit area within coastal zone as the area between the seaward limits of state jurisdiction and 1000 yards landward from the mean high tide line, subject to specified exceptions. Prohibits any development within permit area without permit by state or regional commission. Prescribes standards for issuance or denial of permits. Act terminates after 1976. This measure appropriates five million dollars (\$5,000,000) for the period 1973 to 1976. Financial impact: Cost to state of \$1,250,000 per year plus undeterminable local government administrative costs.

YES

NO

(This Initiative Measure proposes to add and repeal a division of the Public Resources Code and add and repeal a section of the Business and Professions Code. It does not amend any existing law; therefore, its provisions are printed in **BOLD-FACE TYPE** to indicate that they are **NEW**.)

**PROPOSED LAW**

Section 1. Division 18 (commencing with Section 27000) is added to the Public Resources Code, to read:

**DIVISION 18. CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION  
CHAPTER 1. GENERAL PROVISIONS  
AND FINDINGS AND DECLARATIONS  
OF POLICY**

**27000.** This division may be cited as the California Coastal Zone Conservation Act of 1972.

**27001.** The people of the State of California hereby find and declare that the California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced ecosystem; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation; that in order to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to pre-